the circumstances under which it is entered into, such an inference that the parties must have intended the stipulation in question, that the Court is necessarily driven to the conclusion that it must be implied".

In most of the reported cases where such relief is claimed there are stipulations on both sides, and it is argued that unless some further stipulation is implied, the stipulations which are expressed will fail to carry out the intention of the parties, and the contract as a whole will be inoperative. This is not the case here. On looking at the Indenture in question the whole object of the deed is contained in the second recital namely that of ensuring that on the death of either the plaintiff or Haji Saida the survivor shall become possessed of the share of the other of them in the lands in question, and the operative part, the purported transfer to the trustee, is introduced by the statement that the transfer is "in order to effectuate their wishes". The transfer to the trustee is not therefore the chief purpose of the Indenture, but merely machinery for carrying out its chief and in fact only purpose. As the transfer itself is ineffectual I think that the Court is justified in finding that the whole deed will be inoperative unless there is implied a covenant by the parties to carry out the object which they have so clearly expressed.

I find, therefore, that a contract by Haji Saida and by the plaintiff to give effect to the common intention after her or his death must be implied. Such a contract is binding on the conscience of the parties, and can be given effect to without infringing the principles of the Land Code. On Saida's death such a contract became binding on her executor.

I need only refer shortly to the argument that the plaintiff is precluded in some manner by the consent order of the 19th of August 1936 from putting forward his claim. The order as I have pointed out merely provided for the distribution of the residuary estate of Haji Saida. The lands in question in this suit are not mentioned in the order, nor is there any evidence that the ownership of Haji Saida's share was the subject of either litigation or decision. In such a case no question of estoppel can arise.

The plaintiff is accordingly entitled to the declaration prayed. The costs of both parties will be taxed and paid out of the estate of Haji Saida deceased, those of the plaintiff between party and party and those of the defendant between solicitor and client.

Judgment accordingly.

[ORIGINAL CIVIL JURISDICTION]

MURRAY-AYNSLEY, J.

August 28, 1939.

ALAGAPPA CHETTIAR

v.

KADER AND OTHERS.

[PERAK CIVIL SUIT No. 27 of 1939]

Landlord and tenant—death of tenant—personal representative and others occupying premises—whether landlord entitled to recover possession without giving notice to quit—nature of weekly or monthly tenancy.

The plaintiff was the landlord of premises let to K., since deceased, on a monthly tenancy. After the death of K., the plaintiff sued the personal representative of the deceased and the other defendants to recover possession of the premises occupied by them. No notice to terminate the tenancy was given. It was contended on behalf of the plaintiff that no notice was necessary.

Held, (1) that a weekly or monthly tenancy is not a succession of leases for a week or a month, but one of indefinite duration which exists until terminated by act of party or operation of law;

(2) that such a tenancy is an interest which is transmitted to personal representatives; and

(3) that the plaintiff was not entitled to recover possession as the tenancy in dispute was still in existence at the date of institution of the suit.

TRIAL OF SUIT.

Das, for the plaintiff.

Teh, for the defendants Nos. 1, 2 and 7.

Cur. Adv. Vult.

Murray-Aynsley, J.—In this case the Plaintiff, the land-lord, seeks to recover possession of premises from various defendants, who are the occupants of the premises, and the personal representative of a deceased tenant.

From evidence given on behalf of the Plaintiff it appears that the premises were let to one K. Abdullah as a monthly tenant. K. Abdullah died on January 29th last. One K. Kader has since taken out Letters of Administration. No notice to quit has been given. It was contended on behalf of the Plaintiff that this was not necessary. This was based on a view of the nature of monthly and weekly tenancies expressed by Sproule J. in the local case of *Khoo Soo Cheow v. Kam Teik Sean,* 1 F.M.S.L.R. 87.

At the time this view was expressed a considerable amount of uncertainty existed on the subject, which is natural enough as these tenancies are usually only found in the case of small properties and disputes do not come before the superior courts. As the result of the Rent Restriction Acts in England a great deal of litigation resulted and the matter has now been clarified.

As a result I think it may be taken as certain—

(a) That a weekly or monthly tenancy is not a succession of leases for a week or month which appears to have been the view of Sproule J., but one of indefinite duration which exists until terminated by act of party or operation of law.

(b) Such a tenancy is an interest which is transmitted to personal representatives.

Therefore the Plaintiff is not entitled to recover possession as the tenancy is still in existence.

A further attempt was made to show that the tenancy had been forfeited by non payment of rent. This was clearly untenable.

The claim for mesne profits also fails.

Judgment for defendants.

[APPELLATE CRIMINAL JURISDICTION]

MURRAY-AYNSLEY, J.

October 19, 1939.

MOHAMED NOR v. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 76 of 1939]

Evidence—weight of—witness remaining in Court during trial—right to give evidence.

The fact that a witness remains in Court during the progress of a trial is no ground for refusing to allow him to give evidence, although it may reduce the weight to be attached to such evidence as may be given.

MAGISTRATE'S CRIMINAL APPEAL.

Kotval, for the Appellant.

Brodie, Deputy Public Prosecutor, for Respondent.

Murray-Aynsley, J.—In this case the Magistrate refused to accept the evidence of a witness because the witness had remained in Court and had not retired when witnesses were told to do so. In my opinion this is no ground for refusing to allow a witness to give evidence although it may reduce the weight to be attached to such evidence as may be given.

There must be a new trial before a different Magistrate.

New trial ordered.